

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Promote Policy  
and Program Coordination and Integration in  
Electric Utility Resource Planning.

Rulemaking 04-04-003  
(Filed April 1, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING ON NOTICE OF INTENT  
OF THE CENTER FOR ENERGY EFFICIENCY AND RENEWABLE  
TECHNOLOGIES (CEERT) TO CLAIM COMPENSATION**

**1. Summary**

CEERT filed a Notice of Intent (NOI) to claim intervenor compensation in this proceeding. Southern California Edison Company (SCE) filed a response in opposition to CEERT's NOI, and CEERT filed a reply to SCE's response. Pursuant to § 1804 (b)(2),<sup>1</sup> this ruling addresses matters that may affect CEERT's ultimate claim for compensation, but it does not determine whether CEERT will be eligible for an award of compensation.<sup>2</sup>

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<sup>1</sup> Section references herein are to the Public Utilities Code.

<sup>2</sup> If the NOI includes a showing of significant financial hardship, § 1804(b)(1) requires the Administrative Law Judge (ALJ) to issue a ruling addressing whether the customer will be eligible for an award of compensation and whether a showing of significant financial hardship has been made. In this case, CEERT did not make such a showing in its NOI, so a ruling on whether CEERT will be eligible for compensation is not required. However, § 1804(b)(2) provides that the ALJ may issue a ruling "that may point out similar positions, areas of potential duplication in showings, unrealistic expectation for compensation, and *any other matter that may affect the customer's ultimate claim for compensation.*" (Emphasis added.)

## **2. Timeliness of Filing**

Section 1804 (a)(1) provides that a customer who intends to seek a compensation award shall file and serve its NOI within 30 days after the prehearing conference is held. The first prehearing conference in this proceeding was held on April 30, 2004, or nearly five months prior to CEERT's submission of its NOI. However, § 1804(a)(1) also provides that the requirement to file an NOI within 30 days of the prehearing conference may be considered under an alternative procedure "in cases where the schedule would not reasonably allow parties to identify issues within [that timeframe] ..., or where new issues emerge subsequent to the time set for filing."

CEERT states that at the time of the first prehearing conference, it did not anticipate that it would be necessary for it to submit testimony and participate in the long term procurement plan phase of this proceeding. CEERT points to several subsequent events pertaining to renewable procurement and related transmission planning that caused it to conclude that it was imperative for it to submit testimony.

A second prehearing conference to address scheduling of hearings on the long-term procurement plans of the utilities was held on August 25, 2004. Under the circumstances, it is reasonable to compute the time for the filing of CEERT's NOI from the date of the second prehearing conference. Therefore, CEERT's NOI was timely filed on September 24, 2004.

## **3. Customer Status**

CEERT contends that it meets the third alternative statutory definition of "customer" set forth in § 1802(b)(1)(C), i.e., "a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers...." While I do not resolve the

problematic question of CEERT's customer status here, I offer brief comments pursuant to § 1804 (b)(2) in order to promote a proper airing of disputed issues should CEERT pursue its request for compensation.

CEERT states that it is “a nonprofit, public-benefit organization founded in 1990 in Sacramento to bring together concerned scientists, environmentalists, public interest advocates and individuals involved in innovative energy technologies to educate the public about and advocate for increased reliance on cost-effective, environmentally preferred, and sustainable solutions to meeting California's energy needs.” (NOI, p. 1) CEERT's bylaws authorize it to represent the interests of residential energy customers on the environmental and economic issues of energy efficiency and renewable energy.<sup>3</sup> Thus, on the basis of the quoted excerpt from its bylaws, CEERT would appear to meet the statutory definition of a customer in § 1802(b)(1)(C).

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<sup>3</sup> CEERT included an excerpt from its by-laws as an appendix to its NOI, which represents only partial compliance with Commission requirements. CEERT is required to “provide a copy of its articles or bylaws, noting where in the document it is authorized to represent the interest of residential ratepayers.” (D.98-04-059, Conclusion of Law 5; 79 CPUC 2d 628, 676.) In the event that it files a request for compensation, CEERT should cure this defect by including the complete bylaws with the filing. The excerpt provided by CEERT reads as follows:

**Article X - Purposes**

Section 1. CEERT's purposes include educating the public about and advocating for the environmental and economic benefits of increased reliance on cost-effective, sustainable energy efficiency and renewable energy.

Section 2. CEERT intervenes and participates in regulatory or other legal proceedings on behalf of the public generally and residential energy customers specifically in order to accomplish its purposes of protecting the environment and advocating for sustainable, environmentally preferred energy solutions.

Notwithstanding its apparent qualification as a “Category 3” customer, CEERT’s association with energy services providers, generation developers, generation system and equipment manufacturers, independent power producers, and publicly- and investor-owned electric utilities (and the presence of representatives of such firms and organizations on its board of directors) raises the question whether CEERT also represents their interests.<sup>4</sup> If CEERT represents more than the interests of residential customers (*i.e.*, the private commercial interests of renewable generation developers), a corollary question is whether that in any way affects its customer status. The answers may depend on a better understanding of CEERT’s functions and purposes than is obtainable from the pleadings now before the Commission.

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<sup>4</sup> SCE attached to its response an excerpt from CEERT’s website that purportedly lists CEERT’s “member organizations” as of October 10, 2004: American Wind Energy Association; Appliance Recycling Centers of America, Inc.; Bonneville Power Administration; CalEnergy Company, Inc.; California League of Conservation Voters; California Solar Energy Industries Association; Clipper Windpower, Inc.; Cummins West, Inc.; Environmental Defense; Florida Power and Light; FuelCell Energy, Inc.; General Electric Wind Energy; GreenMountain.com; GWF Power Systems; International Fuel Cells; Los Angeles Department of Water and Power; National Association of Energy Service Companies; Natural Resources Defense Council; PacifiCorp; PowerLight; Renewable Northwest Project; San Francisco Public Utilities Commission; Schott Applied Power Corporation; SeaWest Wind Power Corporation; Sierra Club; Silicon Energy Corp.; and Union of Concerned Scientists.

Notwithstanding the website’s reference to “member organizations,” in a data response to SCE CEERT stated that it has no members and that it is a public charity governed by a self-electing board of directors which is composed of individuals. (Answer to Question No. 5.) In its reply to SCE’s response, CEERT notes that its webpage was not accurate or up to date when SCE obtained the information. As of January 14, 2005, CEERT’s website listed these firms and organizations as “Support Organizations.”

While it represents environmental interests, CEERT does not appear to be a group akin to The Green Power Institute, The Natural Resources Defense Council, or the Union of Concerned Scientists, each of which was found to be eligible to claim compensation in this proceeding. (*See* ALJ ruling dated July 27, 2004.) Likewise, CEERT is not a ratepayer advocacy organization similar to the Utility Reform Network or Utility Consumers Action Network, both of which have been found eligible to claim compensation in this proceeding. (*See* ALJ rulings dated July 27, 2004 and September 16, 2004, respectively.) Rather, CEERT's representation of the environmental interests of residential energy customers is, at a minimum, colored by its association with a variety of firms and organizations, some of which clearly have a private commercial interest in energy efficiency and renewable energy. It is this association that gives rise to SCE's objection to CEERT's request.<sup>5</sup>

Unfortunately, the nature of this association remains unclear. It seems likely that some of the "constituents" of CEERT have a commercial interest, perhaps substantial, in the outcome of this proceeding. On the other hand, the mere association of such firms with CEERT, while perhaps suggestive, does not prove they play a major role at CEERT, or that CEERT represents their commercial interests in this proceeding. I share SCE's underlying concern about the potential for misuse of the intervenor compensation program, but in the

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<sup>5</sup> SCE claims that "[r]enewable energy developers continue to play a major role at CEERT." (SCE Response, p. 3.) SCE also claims that "CEERT is primarily a renewable trade organization whose participation in this proceeding is intended to advance the economic interests of its renewable developer members." (*Id.*, p. 6.)

absence of better information about the nature of the association between CEERT and its “constituents,” I am not yet ready to draw the conclusions that SCE does.

I believe it is incumbent upon CEERT to demonstrate that an award of compensation for its participation in this proceeding is related solely to its representation of the interests of residential ratepayers, that it is not a *de facto* renewable energy or similar trade organization whose representation of residential customers is incidental to its primary purposes, and that an award does not result in the use of ratepayer funds to further the private commercial interests of power generators and their suppliers and others with whom it is associated. It has not done so in its NOI.

I conclude that CEERT has not adequately established that it is a customer, but that it should be allowed to perfect its showing on this point if it files a request for compensation.<sup>6</sup> Likewise, other parties should be entitled to address CEERT’s complete showing.

#### **4. Significant Financial Hardship**

SCE points out that the Commission denied a compensation request by CEERT in a 1993 decision (D.93-11-020). In that decision, the Commission found that CEERT had failed to meet its burden of demonstrating significant financial hardship under § 1802(g). SCE argues in effect that the circumstances are the same here, and that CEERT will not be able to demonstrate significant financial hardship in this case.

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<sup>6</sup> I note that an opportunity to review CEERT’s complete bylaws could help the Commission evaluate CEERT’s claimed status as a customer.

CEERT's failure to demonstrate significant financial hardship in the 1993 case is of little import here. If and when CEERT files for an award of compensation in this proceeding, it is entitled (and obligated) to make a showing of significant financial hardship based on the current facts, law, and policies for intervenor compensation. It is premature to resolve the question of significant financial hardship on the basis of CEERT's NOI.

SCE has raised several concerns regarding CEERT's ability to demonstrate significant financial hardship given the private commercial interests that may be represented by CEERT. Also, I note that CEERT claims that it has no members even though the statutory standard for determining the significant financial hardship of "Category 3" customers relies on a comparison of the economic interests of the group's individual members with the costs of effective participation in the proceeding. (§ 1802(g).) It is unclear to me how an organization that claims to have no members can meet the significant financial hardship test applicable to groups representing residential customers. It clearly behooves CEERT to fully address these concerns if it makes a request for compensation.

## **5. Other Requirements**

In other respects, CEERT's NOI fulfills the statutory requirements for NOIs. In particular, CEERT has included a statement of the nature and extent of its planned participation as far as it is possible to set out when the NOI is filed. (§ 1804(a)(2)(A)(i).) CEERT is participating in the Long Term Procurement Plan phase of this proceeding and has submitted testimony, participated in evidentiary hearings, and submitted briefs and comments. CEERT has also included an itemized estimate of the compensation that it expects to request, as required by § 1804(a)(2)(A)(ii). CEERT has estimated that it will incur expenses

of \$45,600 for its attorney, \$9,000 for expert witness fees, and \$1,500 in incidental expenses for a total expense estimate of \$56,100.

**IT IS RULED** that:

1. Center for Energy Efficiency and Renewable Technologies (CEERT) has timely filed an Notice of Intent (NOI) to claim compensation in this proceeding and it has met certain statutory requirements attendant to NOI filings, *viz.*, it has included information on the nature and extent of its planned participation and an itemized estimate of the compensation it expects to request.

2. CEERT is eligible to file a request for an award of compensation, provided, however, that this ruling does not decide whether CEERT is a customer as defined in § 1802(b). If CEERT files for an award of compensation, it must demonstrate that it qualifies as a customer, establish the category of customer for which it qualifies, and make a showing of significant financial hardship under the statutory standard applicable to its customer category.

3. The exact amount of any award of compensation shall be based on the reasonableness of CEERT's request for an award. This ruling in no way ensures compensation. The Commission may audit the records and books of the customer to the extent necessary to verify the basis of the award. (§ 1804(d).)

Dated January 18, 2005, at San Francisco, California.

/s/ MARK S. WETZELL

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Mark S. Wetzell  
Administrative Law Judge



**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling on Notice of Intent of the Center for Energy Efficiency and Renewable Technologies (CEERT) to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated January 18, 2005, at San Francisco, California.

/s/ FANNIE SID  
Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.